

EXHIBIT 3
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Planning and Financing Future Community Facilities Montana Impact Fee Legislation

During the 2005 Montana legislative session, local government representatives, homebuilders, local planners, Realtors and smart growth representatives met in a number of work sessions to attempt to reach agreement on common principles and common language for legislation that would set standards for imposing impact fees, assuring that there is a direct relationship between the fee assessed and a projected facility need created as a result of a development.

Impact fees are exactions on new development designed to finance infrastructure investments associated with the development. Such fees are distinguishable from general taxes and usage fees on both economic and legal grounds.

The new law defines impact fees and establishes a formula for calculation of impact fees to be assessed for future capital facilities. The law provides for a local advisory council and sets a process for calculating fees, especially relative to the application of nexus and proportionality. It requires facilities planning including a description, location and schedule of completion of all proposed public facilities based on projected future growth. The law limits impact fee assessment to five areas of public infrastructure that may be impacted by growth including water, sewer, transportation, storm water and emergency services. However under certain circumstances local governments may impose impact fees to cover capital costs of other than these five essential facilities. Under the statute an existing facility is eligible for impact fee financing if it has been deliberately oversized in anticipation of future development. The fee is to be paid no earlier than the date of issuance of a building permit or at the time of wastewater or water service connection or well or septic permitting.

Impact fee calculation and administration is complex. As exactions, there are specific legal requirements that pertain to impact fees that do not pertain to traditional revenue measures. To be legal local impact fee programs need to be able to withstand the following three-part test.: (1) Does the development assessed create the need for the facilities? (2) Will the development paying the fee derive a benefit from the expenditure of the fee? (3) Does the fee assessed represent the development's proportional share of the cost for the new or expanded facility? A legitimate impact fee should be assessed and collected for a specific purpose, be placed in a special fund for the identified purpose, and represent a proportionate share of the cost of improvement.

This legislation provides an assurance that when public facilities are required to serve new growth and development that those who benefit from new growth and development pay an equitable share of the cost.

Attached are some general tenants of this legislation which became effective April 19, 2005.

Essential Elements of Montana Impact Fee Law

Define and Authorize Impact Fees

The law defines "Impact fee" as any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. The law authorizes local government entities to impose impact fees. Local governments may enact fees on behalf of local districts.

Adoption by Ordinance or Resolution

- Impact fees must be adopted by ordinance or resolution of a local government.
- A local government that had imposed impact fees prior to the adoption of this state impact fee legislation must have brought fees into compliance with state law by October 1, 2006.
- Impact fees imposed by cities with self governing powers prior to the passage of this law are "grandfathered" in at existing fee levels

Establish an Impact Fee Advisory Committee

In order to assess impact fees local governments must establish an impact fee advisory committee to serve in an advisory capacity to the governing body. The committee can be any size but shall include a representative of the development community and a Certified Public Accountant. The committee shall review and monitor the process of developing the ordinance, calculating and assessing and spending the impact fees.

Establish a Formula for Calculation of Impact Fees

- Calculated by an independent and neutral party.
- Calculations and credits to be based on a reasonable and equitable formula and based on generally acceptable accounting principles
- Shall provide credits for system improvements reasonably anticipated to be made by or as a result of the development in the form of projected future

taxes, user fees, or debt service payments and all other available sources of funding the system improvements.

- The methodology shall be based on projected facility needs contained in a facilities plan
- The methodology for determining impact fees shall be based solely on system improvement costs necessary to serve projected development.
- The proposed fee may not exceed a proportional share of the cost of system improvements.

Define Eligible Capital Facilities

- An improvement, by new construction or acquisition, with an expected minimum useful life of 10 years or more that increases the capacity of a public facility to provide services
- Costs for correcting existing deficiencies are not included although a government entity may recoup costs of excess capacity in existing capital facilities when excess capacity has been provided in anticipation of the needs of new development.
- Eligible facilities are defined as sewer, water supply, storm drainage transportation and emergency services.
- Other capital facilities may be eligible if approved as part of an impact fee ordinance or resolution and governed by the procedures of this legislation. These facilities must be approved by a two-thirds majority of the governing body of an incorporated city, town, or a unanimous vote of the board of county commissioners.
- An ordinance or resolution may impose fees for remodeling, rehabilitation, or other improvements to an existing structure, if a project creates increased service demand.

Define time at which fee is paid, no earlier than:

- The date of issuance of a building permit if a building permit is required for the development; or
- The time of wastewater or water service connection or well or septic permitting;

Establish a facilities Plan which:

- describes existing conditions of the facility;
- establishes level of service standards;
- forecasts future additional needs for service for a defined period of time;
- identifies capital improvements necessary to meet future needs for service;
- makes a determination whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
- establishes the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;
- establishes the amount of the impact fee that will be imposed for each unit of increased service demand; and
- includes a schedule setting forth estimated dates, based on the best available information, for commencing and completing construction of all improvements identified in the facilities plan

Provide for Refund of Unexpended Fees

Provide for a refund if fees are not collected and spent in accordance with proposed facilities development schedules contained in the facilities plan.